utilities without setting the application for hearing and conducting discovery (*see, e.g.*, Rule 77 of the Rules of Practice and Procedure, 4 CCR 723-1). Conducting discovery could prove to be cumbersome, costly to the Commission and all parties, and time-consuming. In addition, this approach would delay consideration of the application. Such a result runs counter to both our wishes and the expressed preferences of the rulemaking participants.

(8) The most expeditious way for the Commission to obtain the information we need is that contained in Rule 4.1.20. In addition, it is not unreasonable for the Commission to require an applicant to cooperate with the Commission in its investigation of the application. Indeed, an applicant should welcome the opportunity to provide information to, and to clarify any points for, the Commission, the more so because the alternative is the possibility of lengthy delay.

(9) We view Rule 4.1.20 as a reasonable approach which satisfies our needs and those of the applicants. For these reasons, among others, we adopt the Rule.

j. *Rule 4.1.23* (proposed Rule 5.19) was not a consensus rule. The parties agreed that an applicant should be aware that a certificate is conditional upon applicant's meeting certain prerequisites (*e.g.*, obtaining operating authority, having effective and applicable tariffs or price lists, and complying with statute and Commission rules and orders). Nonetheless, the parties could not agree about the degree of compliance with statutes,

rules, and Commission orders required of an applicant. Some parties requested that the Commission demand only "substantial" compliance with the law; at least one party argued that the limitation was unnecessary and too restrictive. We agree that the limitation is not warranted.

(1) First, absent a definition of "substantial" (which the parties did not supply), use of that modifier could produce confusion and uncertainty on the part of an applicant. Similarly, use of the word "substantial" complicates enforcement of this Rule and could prove to be fertile ground for litigation if the Commission and an applicant do not share a common understanding of the word "substantial" as used in this context. The absence of the word "substantial" eliminates these potential difficulties.

(2) Second, and equally important, the absence of the word "substantial" from Rule 4.1.23 is beneficial. It puts an applicant clearly and unequivocally on notice that compliance with the statutes, rules, and orders in Colorado is obligatory for those who wish to do business in this state. Obviously, this requirement does not limit the Commission's discretion to equitably evaluate each applicant's circumstances to reach a reasonable and balanced result.

(3) On balance, we determine that use of the word "substantial" is counter-productive. Accordingly, for the reasons stated among others, we issue Rule 4.1.23 without the word "substantial."

k. *Rule 4.1.24* (proposed Rule 5.21) was not a consensus rule. The parties agreed that an applicant must be on notice that, upon Commission order, a certificate may be null and void if the information contained in the application is found to be false or to contain misrepresentations. The parties also agreed that an applicant should be on notice that the Commission might take action, but, in accordance with due process requirements, can do so only after notice and opportunity to be heard.

(1) We agree that Rule 4.1.24 is an important notice provision. We also agree that we can take action against a certificate only in accordance with the law, which necessarily includes notice and opportunity for the holder of the certificate to be heard. The holder of a certificate should be given the opportunity to be heard at least on the issues of (a) whether or not the information contained in the application is false or contains misrepresentations and, if so, (b) the action, if any, which the Commission should take as a result. Rule 4.1.24 is consistent with, and furthers, these principles.

(2) The parties could not agree whether or not the misrepresentations should be "material." We determine that Rule 4.1.24 should not contain the word "material." We adopt the same reasons for rejecting "material" as those stated above with respect to use of the term "substantial." We find that the absence of the modifier "material" allows the Commission to retain its full authority to review the circumstances of each provider and to exercise its discretion and judgment on a case-by-case basis.

1. The Commission added a new *Rule 4.2* to inform an applicant who seeks to be designated as a provider of last resort that it must provide the information required by the Commission's universal service and Colorado High Cost Fund Rules. We believe this makes the application process easier to understand. In addition, it informs applicants of supplemental data required to support a request for designation as a provider of last resort. We view this modification to the consensus rule as reasonable and as necessary for the adequate performance by the Commission of its HB 1335 responsibilities to the public.

D. **Content of Rules 5 through 11**

1. By and large, Rules 5 though 11 were consensus rules. There were areas in which consensus was not reached. The Working Group failed to achieve consensus on these points: "substantial" and "material" (proposed Rules 7.1.6, 7.1.8, 7.1.9, 7.4, 8.6, 8.8, and 8.9) and the necessity for a performance bond or other form of surety (proposed Rules 9, 7.1.11, and 8.11).

2. Consistent with our discussion above concerning "substantial deference," we have decided to make modifications, corrections, and conforming changes to the consensus rules. In addition and as discussed below, where no Working Group consensus was reported, we adopt rules which, in our opinion, are necessary and appropriate to carry out our constitutional and statutory responsibilities. In each case in which modifications are made, a full explanation of our rationale is provided.

3. **Rule 6.**

a. We have reworded consensus Rule 6 (proposed Rule 7). As proposed, the Rule would permit a person who has applied for, but not yet received, a certificate to file a notice of intention to exercise operating authority ("Rule 6 notice"). This is inconsistent with consensus Rule 10 (proposed Rule 11) which permits an applicant to file a combined application.[20] We have eliminated the inconsistency. Rule 6 is now consistent with Rule 10.

b. The Commission added a new *Rule 6.1.1*, which requires that the Rule 6 notice contain the provider's name, address, and other identifying information. Although consensus rule contained no such provision, it is obviously information which the Commission and those potentially affected by the Rule 6 notice need to know. In addition, providing this identifying information will not be burdensome on a provider while the absence of such information could prove to be harmful to the public interest.

c. For the reasons discussed above (*see* discussion regarding Rule 4.1.12, *supra* at 17), we have changed consensus *Rule 6.1.2* (proposed Rule 7.1.1). The Rule requires a description of the proposed operating area in metes and bounds. *Rule 6.1.3* requires submission of a map of the proposed operating area.

---

[20] If persons avail themselves of rule 10, they must file an application; and they must provide all information required by the applicable rules. When a combined application is filed, persons cannot simply provide a notice of intention to exercise operating authority.

d. We have reworded consensus *Rule 6.1.4.1* (proposed Rule 7.1.3.1) for clarity, consistency with other Commission rules, and conformity with the remainder of Rule 6. We have not changed the substance of the consensus rule, but have removed language which attempted to restate the content of other Commission rules (*e.g.*, the rules governing relaxed regulatory treatment). To avoid the possibility that the restatement contained in the Rule is incomplete or inconsistent with other Commission rules, we have simply referenced the other rules. In doing so, we place interested persons on notice that there are other rules governing price regulation and governing relaxed regulatory treatment which may be applicable and which should be consulted. We also avoid the possible confusion and misunderstanding which can result from inconsistent rules.

e. To clarify consensus *Rule 6.1.7* (proposed Rule 7.1.4), we have substituted the phrase "contiguous to" for the word "near." In so doing, we have made the Rule more specific and understandable, have removed a potential ambiguity, and have notified interested persons of the precise information which must be provided in the Rule 6 notice.

f. *Rule 6.1.11* (proposed Rule 7.1.8) and *Rule 6.1.12* (proposed Rule 7.1.9) were not consensus rules. They have been reworked for the reasons discussed above (*see* discussion regarding Rules 4.1.23 and 4.1.24, *supra*, at 21 and 23). The requirements are now consistent with the requirements contained in Rule 4.

g. The Commission has added *Rule 6.1.13* (portion of consensus Rule 7.1.8). This Rule was set out separately for clarity and emphasis. For the reasons discussed above (*see* discussion regarding Rules 4.1.23 and 4.1.24, *supra*, at 21 and 23), Rule 6.1.13 does not include the word "material."

h. We have added *Rule 6.2*. In doing so, we moved the second sentence from the introductory portion of consensus proposed Rule 7 and made it a separate rule. We have not changed the substance of the consensus rule. We have given increased emphasis to the notice requirement.

i. We have reordered and renumbered proposed *Rules 7.2, 7.3, and 7.4* for clarity. They are now Rules 6.3, 6.4, and 6.5.

j. *Rule 6.3* (proposed Rule 7.2) was not a consensus rule. For the reasons discussed above (*see* discussion regarding Rules 2.5, 4.1.23, and 4.1.24, *supra*, at 12, 21, and 23), Rule 6.3 uses the term "controlled telecommunications service" and does not include the word "substantial."

k. The Commission has made additional modifications to Rule 6.3. As proposed, the rule stated that certain time frames would be suspended if the Rule 6 notice was incomplete or otherwise out of compliance and would recommence upon curing of the deficiencies. However, the proposed rule did not contain any specificity with respect to certain important procedural points: who would determine that the deficiencies have been cured; by which process would that determination be made; and by whom and in what

form would the notification of correction be made. Rule 6.3 describes limitations on the ability of the person giving the Rule 6 notice to commence providing telecommunications service. Clearly, it is important to clarify these procedural points in order to give the provider an element of certainty. Rule 6.3 contains the required clarifications.

4. **Rule 7.**

a. For the reasons discussed with respect to Rules 4 and 6, we have made changes to proposed Rule 8 to conform the provisions of *Rule 7* to parallel provisions contained in other rules. In addition, clarifying changes have been made.

b. The Commission added a new *Rule 7.1.1*, which requires that the application contain the applicant's name, address, and other identifying information. Although consensus rule contained no such provision, it is obviously information which the Commission and those potentially affected by the application need to know. In addition, providing this identifying information will not be burdensome on an applicant while the absence of such information could prove to be harmful to the public interest.

5. **Rule 8.**

a. This Rule (proposed Rule 9) was non-consensus and much debated. There were four options presented in proposed Rule 9: option one would have no rule; options two and three would require some form of performance bond or surety arrangement; and option four would allow the Commission to permit a provider to

require deposits from persons reselling that provider's facilities or services.

b. After review of the written comments and after discussion during the oral presentations, we are convinced that *Rule 8* should provide the opportunity for deposits in appropriate circumstances. Thus, for the following reasons, among others, we select option four.

c. First, consumer protection is of paramount importance to us. As Colorado proceeds through the transition to a fully competitive telecommunications environment, we cannot and will not sacrifice customers. We are mindful of, and give substance to, the legislatively-declared public policies of increasing the choices available to customers, increasing access to advanced services, reducing the costs of telecommunications service, and maintaining the availability of high quality basic service. However, to the extent possible and within the statutory scheme, the legislature clearly intended for the Commission to continue its efforts to protect end-use customers and to hold them harmless from circumstances beyond their control.

d. With the advent of competition in the local exchange telecommunications market, we recognize that the Commission is no longer in the same position to protect consumers and to ensure that telecommunications service providers will continue to provide quality basic service. It is possible some consumers may be harmed by certificated providers who abandon their customers and who take money for services which they then do not

provide. However, the fact that the Commission's authority to protect consumers is modified does not mean that it has been eliminated. In fact, there are many who believe that the Commission's oversight and protective responsibilities will be even more important as an increasing number of unknown market operators seek Colorado dollars. Thus, we cannot agree with those commenters who urge us not to adopt any version of Rule 9. We believe it necessary to have some protection for consumers.

e. Second, Rule 8 does not actually impose a performance obligation. Rather, it places persons on notice that, through other rules or by applicable tariff provisions, the Commission may allow a facilities-based provider to require a deposit from persons reselling that provider's facilities or services. Rule 8 further provides notice to facilities-based providers that they may be required to assume certain responsibilities of a reseller which is unable or unwilling to continue to provide service. We consider it imperative that persons who desire to become providers of local exchange telecommunications service be aware of their duties and responsibilities so that they can assess their commitment and their ability to meet those obligations.

f. Some commenters opposed adoption of option four, arguing that it is anti-competitive because it gives incumbent providers *carte blanche* to impose selective deposit requirements on potential competitors. We disagree. Full disclosure enhances competition. In addition, any deposit requirement must pass muster

with the Commission because it can be imposed only in accordance with a rule requirement or in accordance with a tariff provision.

g. Third, we find option four attractive because it is essentially self-executing (once the rule or tariff provision is in place). As a result, we do not foresee extensive Commission involvement in enforcement of this provision.

h. Fourth and finally, we reject options two and three because they present legal difficulties and are otherwise problematic. For example, several commenters asserted that options two and three were beyond the authority of the Commission.[21] Others claimed that those options would be difficult for the Commission to regulate or to enforce.[22] Option four, on the other hand, was supported by some commenters as a reasonable approach. Further, no commenter suggested that option four was illegal or would be difficult to administer. Our review satisfies us that option four presents neither legal nor enforcement difficulties.

i. For these reasons, among others, we issue Rule 8, which relates to deposits regarding interconnection and resale. In light of our decision concerning Rule 8, we delete proposed Rule 7.1.11 and proposed Rule 8.1.11, which are now unnecessary.

---

[21] In view of our decision not to adopt either of these options, we take no position with respect to this assertion.

[22] In view of our decision to adopt option four, we need not -- and do not -- address these claims.

E. **Adoption of Rules**

We are convinced that these rules regulating the authority to offer local exchange telecommunications services are essential to achieving the goals of HB 1335 in an orderly and timely fashion. The rules appended to this Decision as Attachment A are appropriate for adoption.

III. **ORDER**

A. **The Commission Orders That**

1. The rules set forth in Attachment A are adopted.

2. This order adopting the attached rules shall become effective 20 days following the Mailed Date of this decision in the absence of the filing of an application for rehearing, reargument, or reconsideration. In the event an application for rehearing, reargument, or reconsideration to this decision is timely filed, and in the absence of further order of this Commission, this order of adoption shall become final upon a Commission ruling denying any such application.

3. Within 20 days of final Commission action on the attached rules, the adopted rules shall be filed with the Secretary of State for publication in the next issue of the *Colorado Register* along with the opinion of the Colorado Attorney General regarding the legality of the rules.

4. The adopted rules shall also be filed with the Office of Legislative Legal Services within 20 days following the above-referenced opinion of the Colorado Attorney General.

5. The 20-day period provided for in § 40-6-114(1), C.R.S., within which to file applications for rehearing, reargument, or reconsideration begins on the first day following the effective date of this order.

6. This order is effective on its Mailed Date.

B. ADOPTED IN SPECIAL OPEN MEETING March 7, 1996.

(SEAL)

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

ROBERT J. HIX

CHRISTINE E. M. ALVAREZ

VINCENT MAJKOWSKI

Commissioners

ATTEST: A TRUE COPY

Bruce N. Smith
Director

(Decision No. C96-161)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

* * *

IN THE MATTER OF PROPOSED RULES REGARDING CERTIFICATION OF PROVIDERS OF LOCAL EXCHANGE TELECOMMUNICATIONS SERVICES.	))))	DOCKET NO. 95R-555T

DECISION ADOPTING RULES

Mailed Date: March 15, 1996
Adopted Date: March 7, 1996

BY THE COMMISSION: 1
Background and Procedural Matters 1

DISCUSSION 5
Consensus and "Substantial Deference." 5
Need for Rules Regulating Applications by Local Exchange Telecommunications Providers to Execute a Transfer. 7
Content of Rules 8
Proposal of the Universities 9
Rule 2 12
Rule 3 13
Adoption of Rules 20

I. BY THE COMMISSION:

A. Background and Procedural Matters

1. This matter is before the Commission to consider adoption of rules regulating applications by local exchange telecommunications providers to transfer a certificate of public convenience and necessity, a certificate to provide local exchange telecommunications services, or an operating authority; to obtain controlling interest in a local exchange telecommunications

provider, whether by transfer of assets or transfer of shares; to transfer assets not in the ordinary course of business; to execute a merger; or to do any combination of the foregoing. These rules implement the requirements of House Bill No. 95-1335 ("HB 1335"), codified at §§ 40-15-501 *et seq.*, C.R.S.

B. In enacting HB 1335, the General Assembly determined that competition in the market for basic local exchange service is in the public interest. *See* § 40-15-501, C.R.S. Consistent with that policy goal, HB 1335 directs the Commission to encourage competition in the basic local exchange market by adoption and implementation of appropriate regulatory mechanisms to replace, eventually, the existing regulatory framework. Specifically, the Commission must:

1. establish standards for basic telephone service;

2. establish mechanisms to advance the goal of universal service, i.e., provision of basic telephone service to all at just and reasonable rates;

3. consider the necessity for specific mechanisms to advance goals relating to universal access to advanced telecommunications services; and

4. resolve other issues relating to implementation of competition in the local exchange market.

C. The Commission has the responsibility to open local exchange telecommunications markets to competition and to structure telecommunications regulation in a manner that achieves a transition to a fully competitive telecommunications market. To that end, the Commission must establish the terms and conditions

under which competition will occur.[1] Logically, this includes the process by which a transfer is considered by the Commission.

D. HB 1335 contains an equally important, and somewhat counter-balancing, public policy directive which the Commission must implement: structure the transition to competition to protect basic service, which is

> the availability of high quality, minimum elements of telecommunications service, as defined by the Commission, at just, reasonable, and affordable rates to all people of the state of Colorado.

Section 40-15-502(2), C.R.S.

E. To realize these public policy goals, the Commission may use a variety of mechanisms including, but not limited to, "more active regulation of one provider than another or the imposition of geographic limits or other conditions on the authority granted to a provider." Section 40-15-503(2)(a), C.R.S. In addition, the Commission must consider the differences between the economic conditions of urban and rural areas of the state. *Id.* Further, the Commission must adopt rules which allow simplified regulatory treatment for basic local exchange providers "that serve only rural exchanges of ten thousand or fewer access lines." Section 40-15-503(2)(d), C.R.S.

F. The Working Group established pursuant to §§ 40-15-503 and 40-15-504, C.R.S., has recommended proposed rules for consideration by the Commission to implement HB 1335. These proposals are found in the Report of the HB 1335 Telecommunications Working Group to

---

[1] *See* §§ 40-15-502(1) and 40-15-502(3)(b), C.R.S.

the Colorado Public Utilities Commission, dated November 30, 1995 (the "November report"), and in the Supplemental Report of the HB 1335 Telecommunications Working Group to the Colorado Public Utilities Commission, dated December 20, 1995 (the "December report").

G. As part of the November report, the Working Group transmitted to the Commission proposed rules regulating applications by local exchange telecommunications providers to execute a transfer.[2] The proposed rules governed a wide range of transfers. These proposed rules were attached to our notice of proposed rulemaking in this docket, Decision No. C95-1172, dated November 29, 1995.

H. In accordance with our notice of proposed rulemaking, hearing on these proposed rules was held on January 12, 1996.[3] The following parties submitted written and oral comments for our consideration: AT&T Communications of the Mountain States, Inc. ("AT&T"); AT&T Wireless Services ("AT&T Wireless"); Colorado Independent Telephone Association ("CITA"); Farmers Telephone Company, *et al.*; ICG Access Services, Inc., and Teleport Denver Ltd. ("ICG"); MCI Telecommunications Corporation ("MCI"); MFS Intelenet of Colorado, Inc. ("MFS"); Office of Consumer Counsel ("OCC"); staff of the Commission ("Staff"); TCI Communications,

---

[2] November report at Appendix G, discussed in the November report at pp. 76-86.

[3] All oral presentations were made at the public hearing held on January 12, 1996. In accordance with the notice of proposed rulemaking, the Commission was available to receive public comment on January 25 and 26, 1996. However, no member of the public appeared on either of those dates to present comment.

Inc., *et al.* ("TCI"); University of Colorado and Colorado State University ("Universities"); U S WEST Communications, Inc. ("USWC"); and Charles Wimber.

I. In addition to the written comments filed with the Commission and the oral comments made at the hearing, the Commission took administrative notice of, and has considered and relied upon, the November report, the December report, and the Public Outreach Meetings Report ("Outreach Report") dated December 20, 1995.[4] These reports are filed in Docket No. 95M-560T, the repository docket regarding implementation of §§ 40-15-105 *et seq.*, C.R.S.

II. DISCUSSION.

A. Consensus and "Substantial Deference."

1. The rules proposed by the Working Group were not wholly "consensus" rules. Subsections 40-15-503(1) and (2)(a), C.R.S., require that we give "substantial deference" to the

---

[4] This report summarizes the comments (both oral and written) received during 16 public outreach meetings which the Commission held throughout the state in September and October, 1995, to solicit input on competition to provide local telephone service and on a proposed "Telecommunications Consumers Bill of Rights" drafted by the Commission. Meetings were held in Breckenridge, Steamboat Springs, Glenwood Springs, Colorado Springs, Trinidad, La Junta, Lamar, Pueblo, Grand Junction, Montrose, Cortez, Durango, Alamosa, Fort Collins, Denver, and Fort Morgan. Participants represented a diverse cross-section of the public.

As stated in the report,

> An overriding concern expressed at the meetings was the question of whether statewide competition in the local telephone market is a realistic expectation, how long will it take competition to reach less densely-populated areas of the state, and how will the PUC manage the transition period?

Outreach Report at 4.

proposals submitted by the Working Group with respect to issues on which the Working Group reports that it has reached consensus on or before January 1, 1996.

2. The statute does not define "substantial deference." Thus, in the course of the HB 1335-related rulemakings, we must develop and apply our understanding of "substantial deference." To do so, we have examined the concept of "substantial deference" within the context of the public policies articulated by the General Assembly, as well as in the context of the Commission's constitutional and statutory authorities and responsibilities.

3. In implementing our understanding of "substantial deference," we take the following into consideration:[5] our overarching obligation to protect the public interest, even as we shepherd the transition into a fully competitive telecommunications marketplace; the consistency of the proposed consensus rule with all provisions of § 40-15-501 *et seq.*, C.R.S., and other applicable statutes; the consistency of the proposed consensus rule with existing Commission rules; the ability of the public and of regulated entities to understand the proposed consensus rule and the processes described therein; the ability of the Commission to enforce the proposed consensus rule; the ability of the proposed consensus rule to accomplish or to assist in the transition to a fully competitive telecommunications environment while assuring the availability of basic service at just, reasonable, and affordable

[5] This listing is not a definitive statement of the considerations relied upon by the Commission

rates to all people of Colorado; and the fairness of the proposed consensus rule to all telecommunications service providers, existing and prospective. We examine each proposed consensus rule in light of these considerations.

4. We are of the opinion that we may make changes to a proposed consensus rule where, after full consideration of the record and the factors outlined above, we deem it necessary. Because the General Assembly has required us to attach significant weight to the opinions of the Working Group, the rationale supporting any decision by this Commission to reject a consensus rule must be clearly articulated.

B. **Need for Rules Regulating Applications by Local Exchange Telecommunications Providers to Execute a Transfer.** No party in this proceeding questioned the need for these rules. We agree. The inability of the parties to reach consensus on some of the rules does not negate this agreement. Rather, the disagreements were the result of differences of opinion on specific points.

1. First, the Commission has an obligation to assure provision of basic service to all residents of Colorado at just, reasonable, and fair rates. To meet this obligation the Commission must be informed and must have a reasonable opportunity to take appropriate action. This is particularly true when the action which a provider proposes to take affects the ownership of Commission-granted authorities or of the telecommunications provider itself.

2. Second, the Commission must have sufficient information to support a finding that, if a transfer is approved, the transferee: is willing and able to provide service consistent with applicable statutes and rules, including the quality of service rules; will provide the service as promised so that end-users and other providers are protected; and will enhance the universal availability of basic local exchange service.

3. Third, each transferor and transferee must have adequate notice and sufficient information regarding its obligations (*e.g.*, what information must be supplied as part of an application and the obligations and responsibilities assumed if the transfer is approved).

4. Fourth, and certainly not less important, the process must be clearly articulated, competitively neutral (*e.g.*, favor neither large nor small providers, favor neither incumbent providers nor new providers), and must not act as a barrier to competition. These rules meet these criteria.

C. **Content of Rules**[6]

1. The Working Group was able to reach consensus regarding the majority of issues set forth in the rules. The Working Group failed to reach consensus on this point: statements to be made by a provider as part of the application (proposed Rule 4.2.10 and proposed Rule 4.3).

---

[6] We have determined that proposed Rule 1: basis, purpose, and statutory authority, is not a rule. Thus, although we retain the statement, it is not numbered as a rule. As a result, the rules we promulgate have been renumbered from the proposed rules. We use the final rule numbers in our discussion, making reference to the proposed rule numbers where necessary for clarity.

2. Consistent with our discussion above concerning "substantial deference," we will make modifications, corrections, and conforming and other changes to the consensus rules which we deem necessary. In addition, where no Working Group consensus was reported, we adopt rules which are, in our opinion, necessary and appropriate to carry out our constitutional and statutory responsibilities.

3. **Proposal of the Universities**

a. The Universities proposed a new option for Rule 1: Applicability. The Universities argued that the requirements of these rules should not apply to institutions of higher education[7] which own or lease and operate telecommunications systems for the purpose of providing intercommunications within those systems and local exchange access services to administration, faculty, staff, government and/or university-affiliated non-profit corporation employees at their work locations, and to students resident in institution-affiliated housing.

b. The Universities rely on this Commission's April 11, 1984, Decision No. R84-428, in support of their position. In that decision, the Commission determined that the Colorado State University ("CSU") telephone system did not constitute public utility service.[8]

---

[7] Section 24-113-102(2), C.R.S. (1988), defines an "institution of higher education" as "a state-supported college, university, or community college."

[8] Decision No. R84-428 is expressly limited in its applicability to the telephone system of CSU as described in that decision.

c. In the discussion section of Decision No. C84-428, the administrative law judge stated:

> CSU will not serve non-university entities such as the three private businesses located on campus or the Federal government agencies. Mountain Bell will continue to serve these businesses and agencies. CSU, by providing private service as above described, is not a public utility since it is not offering service to the general public indiscriminately.
>
> * * *
>
> The next question presented in this case is whether CSU, by its proposed telephone system, is a reseller of telephone service.
>
> * * *
>
> The Commission has . . . in Decisions No. C82-1928 and C82-1925 defined "resale" as an entity charging more or less than the certificated supplier of utility service. The proposed CSU service does not constitute resale under the above definitions since CSU will not increase or reduce the cost of service. Consequently, CSU will not be a reseller of intrastate telecommunications services.

Decision No. R84-428 at 5.

d. Clearly, with the advent of HB 1335, the local exchange telecommunications service market in Colorado has changed radically. For example, in Docket No. 95R-557T, *In the Matter of Proposed Rules Regarding Implementation of §§ 40-15-101, et seq. -- Resale of Regulated Telecommunications Services*, there are proposals to change the definition of "resale" that the Commission adopted in 1982. Further, HB 1335 speaks in terms of "multiple providers of local exchange service"[9] and clearly contemplates that all local exchange service providers need not be designated by the

[9] Section 40-15-501(3)(c), C.R.S.

Commission as providers of last resort.[10] The obligation of a local exchange service provider to serve all members of the public indiscriminately, and thus its status as a public utility as defined in Decision No. R84-428, has clearly been affected by the enactment of HB 1335.

e. For the purpose of this rulemaking proceeding, we reject the argument of the Universities that institutions of higher learning should be exempted from the application of these rules. In light of the evolving responsibilities of local exchange service providers under HB 1335,[11] the broad statutory definition of "public utility" found at § 40-1-103, C.R.S.,[12] and the inclusive definition of "person" found at § 40-1-102(5), C.R.S.,[13] we find that the record in this proceeding does not support the adoption of the Universities' proposed language.

f. We also find that the Universities' proposed language may create an exemption from the application of these

---

[10] Section 40-15-502(6), C.R.S.

[11] "Wise public policy relating to the telecommunications industry and the other crucial services it provides is in the interest of Colorado and its citizens[.]" Section 40-15-501(2)(a), C.R.S.

"A provider that offers basic local exchange service through use of its own facilities or on a resale basis may be qualified as a provider of last resort. . . Resale shall be made available on a nondiscriminatory basis[.]" Section 40-15-502(5)(b), C.R.S.

[12] As relevant here, this section defines a "public utility" as "every common carrier, ... telephone corporation, telegraph corporation, ... person, or municipality operating for the purpose of supplying the public for domestic, mechanical, or public uses and every corporation, or person declared by law to be affected with a public interest[.]" This definition is subject to exemptions found in § 40-1-103(1)(b), C.R.S.

[13] This section defines "person" as "any individual, firm, partnership, corporation, company, association, joint stock association, and other legal entity."

rules that is overly broad. We believe that the issue raised by the Universities is more appropriately considered in an adjudicatory proceeding where the specific facts pertaining to those entities can be addressed.

4. **Rule 2**

a. This rule contains the definitions applicable to this set of rules. The Commission has modified the consensus rule to add a statement that the statutory definitions are applicable and controlling. The addition of this language places interested persons on notice that they must refer to the statute to be sure that they understand the definitions of words and phrases used in the rules. This is the same procedure that any utility or interested person should follow in any situation involving Commission rules.

b. By Rule 2.3, the Commission added a definition of "certificate of public convenience and necessity." The term "certificate of public convenience and necessity," although used in the consensus rule, was not defined. The Commission added this definition for clarity.

c. The Commission has determined not to adopt two definitions contained in the consensus rule: "form tariff or form price list" (proposed Rule 3.5) and "local calling area" (proposed Rule 3.6). Neither of these terms appears in these rules. The definitions were, therefore, unnecessary.